UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.7/1995/6
22 February 1995

ORIGINAL: ENGLISH

COMMISSION ON NARCOTIC DRUGS
Thirty-eighth session
Vienna, 14-23 March 1995
Item 4 (c) of the provisional agenda*

REDUCTION OF ILLICIT DEMAND FOR DRUGS

Integrated drug strategies: Interrelationship between law enforcement and demand reduction

Report of the Secretariat on alternatives to conviction or punishment**

Summary

During the thirty-seventh session of the Commission on Narcotic Drugs, many representatives referred to the need for an examination of the relationship between penal measures and demand reduction activities, including consideration of possible alternatives to conviction or punishment, in particular alternatives to imprisonment. In the present report, the differing philosophical concepts underpinning various legal systems are outlined, followed by an analysis of the provisions relating to conviction and punishment set forth in the international drug control treaties. The provisions of national drug control legislation that permit or require offenders to be diverted from the criminal justice process at various stages, and that set out possible alternatives, are examined. Examples of alternatives to conviction and imprisonment that have been developed in various jurisdictions are reviewed. There is often a difference between provisions for non-custodial sentences under domestic drug legislation and what occurs in practice. That happens for two reasons: provisions may exist in law without being put into practice because the conditions for doing so have not been fully met, as in the case of treatment provisions which can only be applied when treatment programmes for offenders are available; or provisions for alternative sentences may exist in the wider criminal code, without being specified in particular drug legislation. The latter situation is particularly evident in relation to juveniles and young offenders. Pretrial diversion through discontinuation or conditional discontinuance of criminal proceedings is covered in detail. An analysis is made of the use of cautioning, of conditional discontinuance related to treatment and of civil sanctions. The alternatives following conviction include fines, a suspended sentence, parole, treatment, community service and corrective labour. The advantages and disadvantages of using drug testing to check compliance with conditions attached to non-custodial sentences are reviewed, and the electronic monitoring of offenders is considered.

*E/CN.7/1995/1.

**As foreseen in article 36 of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, article 22 of the Convention on Psychotropic Substances of 1971 and article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

V.95-51371T

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INTRODUCTION

1. At the thirty-seventh session of the Commission on Narcotic Drugs, many representatives referred to the importance of demand reduction and to the need for an examination of the relationship between penal measures and demand reduction activities, including consideration of possible alternatives to conviction or punishment, in particular, alternatives to imprisonment. The present report has been prepared in response to those observations. Imprisonment as a sentencing option is therefore not considered or evaluated in the following analysis.

2. Three of the international drug control conventions refer to alternatives to conviction or punishment in their articles on penal provisions: article 36 of the Single Convention on Narcotic Drugs of 1961,[1]* as amended by the 1972 Protocol;[2] article 22 of the Convention on Psychotropic Substances of 1971;[3] and article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[4]

3. Those articles define the actions that States parties to the conventions are required to establish as criminal offences, and provide that such actions should be made liable to adequate punishment, in particular imprisonment or other penalties of deprivation of liberty. They allow parties to provide in certain cases, either in addition to sanctions or as an alternative to conviction or punishment, for measures of treatment, education, after-care, rehabilitation or social reintegration, as further specified in articles on measures against the abuse of drugs and psychotropic substances, in particular article 38 of the 1961 Convention, as amended by the 1972 Protocol and article 20 of the 1971 Convention. The objective of alternative measures under the conventions is therefore clearly to allow for a bridge between the penal system and the system of care for offenders who are drug abusers.

4. All the alternative options to imprisonment described in the present report are permissible under the conventions.

5. Many alternative methods of dealing with drug offenders other than by arrest and conviction are used in different parts of the world. However, what may be available is largely dependent on the type of legal system, the model under which it operates and the underlying philosophy of the system.

6. In some jurisdictions, the law will be based solely on the nature of the actual offence, without regard to the characteristics of the offender who is convicted and punished for that offence. Elsewhere, the utilitarian or deterrent approach is adopted, whereby any punishment is justified if it prevents that person from reoffending. Others view the deterrent effect as general rather than specific, and see particular sentences as a deterrent to potential offenders. Another fundamental philosophical concept underpinning some criminal justice systems is that of redress - compensation by the individual directly to victims or to society in general. Some others would argue that punishment must also be a means whereby society is defended against future activities of the offender by, in effect, taking an offender out of circulation. Alternatively, some punishments are based upon the philosophy that society needs to demonstrate its abhorrence of crime by emphatically denouncing it. Many criminal justice systems try to combine more than one approach, and decisions are based upon trying to balance often conflicting aims.

7. Another factor in sentence variation for drug offences around the world relates to whether the offender is dealt with according to the nature of the offence or to his or her physical condition. If the

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*No provisions for alternatives to conviction or punishment were included in the 1961 Convention; they were embodied in article 36 of that Convention as amended by the 1972 Protocol.

offence itself is the defining factor, then the alternatives relate to the nature of the drug offences, such as illegal possession, manufacture or trafficking. If the physical state of the offender involved in drug abuse is the main consideration, then whether the person arrested is dependent on illicit drugs or is a non-dependent abuser will be the key issue determining the nature of the response. Thus, if someone dependent on heroin or opium was arrested for a theft offence, the way in which the offender was dealt with by the police and the courts would be determined by his or her drug abuse status. Jurisdictions sometimes define the options available in terms of the offence or the drug abuse status of the offender, and sometimes by reference to both criteria. Whether someone has committed a drug offence or is drug-dependent, or whether both criteria are fulfilled, might therefore determine how the offender is dealt with.

8. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 21 A, on custodial and non-custodial treatment of offenders,[5] invited Member States:

(a) To consider the extent to which the use of imprisonment might be replaced by non-custodial sanctions consistent with public safety;

(b) To emphasize that non-custodial sanctions constitute sentences in their own right and should not be seen as merely substitutes for sentences of imprisonment;

(c) To broaden the availability of non-custodial sanctions as judicial sanctions;

(d) To take into consideration, in the framework of non-custodial sanctions, the availability of alternatives to pretrial custody which could be adopted more extensively;

(e) To avoid, reduce or eliminate overcrowding in prisons by considering the use of a combination of factors: a reduction in the length of prison sentences available; the substitution of non-custodial sanctions or measures; and the reduction of pretrial detention by facilitating pretrial release or the use of bail and recognizances.

9. In its resolution 21 C, on drugs, it invited Member States to consider the extent to which they may wish:

(a) To give preference to the use of non-custodial measures in relation to the personal use of drugs;

(b) To provide medical, psychological and social treatment programmes for drug-dependent offenders, to be applied in appropriate cases.

10. Many countries have experienced a large increase in the number of people arrested for drug offences, and there is a danger that the courts and the prisons will be overwhelmed by the number of people being processed. From a pragmatic viewpoint, therefore, the alternatives to arrest and imprisonment that have been developed in different parts of the world should be examined, so that States can see the array of options available, bearing in mind that they were developed against a background of differing legal philosophies and systems.

11. Apart from the cost of remanding an accused person in custody and of incarceration if found guilty, as noted in a working paper on deinstitutionalization of corrections and its implications for the residual prisoner, prepared by the Secretariat and submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980: "The experience of imprisonment and the post-prison social stigma attached to the

ex-prisoner by society make it practically impossible for most former prisoners to readjust to society and to lead normal productive lives" (A/CONF.87/7, paragraph 38). Therefore, in developing alternatives to conviction and imprisonment, the rate of recidivism should also fall, thereby helping to ease the pressure on the criminal justice system.

12. "Against this background, there is a growing belief that non-custodial sanctions and measures may constitute a better way, providing penalties that are proportionate to the offence committed by the offender and that carry greater possibilities for the rehabilitation and constructive reintegration of the offender into society."[6]

13. The term "non-custodial measure" refers to "... any decision made by a competent authority, at any stage of the administration of criminal justice, which requires a person suspected of, accused of or sentenced for an offence to submit to certain conditions or obligations that do not include imprisonment. The term refers in particular to sanctions for an offence that require an offender to remain in the community and to comply with certain conditions."[7]

14. The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) were adopted by the General Assembly in its resolution 45/110 of 14 December 1990, on the recommendation of the Eighth Congress, and are contained in the annex thereto. The Tokyo Rules "... seek to set out what are generally accepted as good principles and current good practice in imposing and implementing non-custodial measures."[7] One of their fundamental aims is "... to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society."[8]

15. Rules 2.3 and 2.5, set forth below, are of particular relevance in the present context:

> "2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, form pretrial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.
>
> 2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law."

16. In some jurisdictions the discretion to arrest a person lies with the police, usually within formal policy guidelines, sometimes through an informal policy statement reflecting the culture of the local police force. Where the police have the right to stop and search someone whom they suspect of committing an offence, such as one of illegal possession of drugs, the extent to which that takes place will determine the number of arrests made. In some States, for example, the practice appears to be that possession of small amounts of cannabis for personal use is not automatically subject to police or judicial action. That policy is not enshrined in the law, but has become established practice, recognized as such by police and public alike, in the countries concerned. Thus, possession of cannabis might be against the law, but the type of offence could be classified as a misdemeanour for which the penalty is small, and regarded by both the police and wider society as not a priority for enforcement. Therefore, it is at this first stage, whether to arrest or not, that entry into the criminal justice system takes place. Once an offender has become part of the criminal justice system, the issue of disposal comes into play.

17. The Tokyo Rules also set out the legal safeguards that should surround any disposition of non-custodial measures, including conformity with the rule of law, as well as the requirement of the offender's consent and, in rule 3.2, that the measure "... shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims."[9]

18. In different legal systems and in different societies the gravity of drug offences is likely to be viewed in diverse ways. Thus, for apparently the same offence an offender might be sentenced differently in different countries. Such sentencing variation cannot be addressed in the present report, but the range of available alternatives to imprisonment in different legal systems can be explored.

19. In section II of the present report, alternative measures provided for by States under their national drug control legislation are considered, while in section III, the range of available alternatives in use, although not always specifically identified in the drug control legislation, is described. The practical aspects of their implementation are also described, as well as examples of national experience of particular interest.

I. CONCLUSIONS

20. In response to both the general ineffectiveness of incarceration for the prevention of recidivism and, in many countries, the swamping of the judicial and penal systems with drug abuse cases, many alternative ways have been found for dealing with drug abusers.

21. Many innovative schemes are described in the present report, with apparently the most successful being those which involve close supervision and treatment, and those which seek to avoid even an appearance in court, through discontinuance of prosecution, whether by police caution, by a combination of police caution and supervision, or by the use of advisory and supervisory panels.

22. One consistent finding is that the quality of staff working in treatment and rehabilitation programmes has been the main key to success, rather than organizational or administrative factors. That confirms the need for professional and well-trained staff.

23. An important implication of the above is that alternatives to imprisonment may not, in the short run, be cheaper alternatives, particularly for the least developed countries. If recidivism diminishes and the number of people abusing drugs decreases in the medium and longer term, then the balance of the equation shifts in favour of non-incarceration. What is lacking is research into the costs and benefits of incarceration versus the alternatives, in both the short and the long term, and an evaluation of the different alternative approaches.

24. However, it must be acknowledged that the effectiveness of non-custodial sanctions in preventing recidivism of drug abusers is difficult to determine because too little research has been devoted to their evaluation. The non-custodial sanctions that have received even a cursory evaluation indicate that they are more successful than imprisonment. Nevertheless, it is not always clear that the population of drug abusers selected for diversion or non-custodial sentencing exactly matches the characteristics of those who are imprisoned. Non-custodial sentences may be given to those thought to be better able to benefit; they therefore have the greatest chance of success.

25. There is always a danger of being too enthusiastic about existing programmes, because the purpose of particular programmes is seldom specified. While many administrators believe their programmes to be successful, and the persuasive force of conventional but untested wisdom is often great, the

programmes may not be as successful as claimed. However, what is evident from research is that incarceration, particularly at a young age, is highly correlated with further imprisonment. Also, deviant behaviour, such as drug abuse, is unlikely to change through punishment alone, and the abuser needs help and support on the road to recovery.

II. ALTERNATIVES TO CONVICTION AND PUNISHMENT UNDER NATIONAL DRUG CONTROL LEGISLATION

26. On the basis of the laws and regulations communicated to the United Nations International Drug Control Programme (UNDCP) by States parties to the international drug control conventions, the alternative measures provided for by States under their drug laws, as well as the categories of persons and types of offences for which such measures are made available, are considered in the present section. Not all legislation in any particular country is dealt with, only that which is drug-related and has actually been communicated to UNDCP. For example, alternatives are usually available in a given country under the code of criminal procedure, which is not typically provided to UNDCP.

A. Legal prerequisites to the prescription of treatment measures as alternatives

27. The availability of alternative measures may depend on conditions linked to the offender and to the type of offence committed. Article 36 of the 1961 Convention as amended by the 1972 Protocol and article 22 of the 1971 Convention specify that alternative measures may be provided for offenders who are drug abusers. It is left to the discretion of the States parties to determine for which offences alternative measures may replace conviction or punishment. In article 3 of the 1988 Convention a slightly different approach is adopted. On the one hand, it does not limit to drug abusers the field of application of alternative measures, but distinguishes between treatment and after-care measures available to offenders who are drug abusers, and education, rehabilitation or social reintegration measures available to offenders in general. It introduces, on the other hand, a condition linked to the degree of seriousness of the offence committed. Offences of a grave nature (as enumerated in article 3, paragraph 1) are liable to the deprivation of liberty and pecuniary sanctions such as confiscation of assets, while for offences of a minor nature including minor offences under article 3, paragraph 1, and offences aimed at personal consumption under article 3, paragraph 2, alternative measures to conviction or imprisonment may be substituted. When they provide for alternative measures, national laws usually combine conditions linked to the use of drugs by the offender and conditions linked to the seriousness of the offence committed.

1. Abuse of drugs by the offender

28. The application of alternative measures to drug offenders who are not drug abusers, as referred to in article 3, paragraph 4, of the 1988 Convention, may exist in practice, and be provided for under the rules of criminal procedure or other legislation, but is not reflected in any of the national drug control laws considered. It would furthermore fall beyond the scope of the present report, which focuses on demand reduction. All the drug control laws considered, when they provide for alternative measures, refer to "drug abusers", "drug users" or "drug addicts".

29. Some laws introduce distinctions relative to the regularity or severity of abuse. They distinguish between "occasional and habitual abusers", "simple abusers" and "addicts", "addicts in need of treatment" and "abusers in a state of dependence". Alternative measures may vary accordingly, including medical supervision for the simple abuser and detoxification for the dependent abuser, or may even be refused to the occasional user who incurs imprisonment, while the dependent abuser will be liable to medical treatment.

30. In order to determine whether an offender is a dependent abuser or an occasional abuser, many laws require a medical evaluation based on personality and physical examinations. Under a few laws, drug abuse appears to be equated with a psychiatric condition, in certain cases exonerating the drug abuser from responsibility for his or her acts. Mention is made under such laws of drug dependence as "impairing the exercise of free judgement", rendering the offender "unfit to stand trial" or "incapable of understanding the unlawful nature of his conduct". Under most legislation, however, the drug abuser, even if considered to be a sick person and in need of medical treatment, is still held responsible for his actions.

31. Some laws use the terms "drug abusers" or "drug addicts" without referring in fact to a precise medical concept, but simply to designate offenders who enter into contact with the criminal justice system for an offence of drug use or drug possession for personal consumption. The law enforcement authority competent to deal with the offence is entrusted with the qualification of the offender as a drug abuser, on the basis of the facts before it.

2. Offence committed

32. In most cases, the provision of alternative measures results from a balance between, on the one hand, the sickness of the drug abuser and his or her need for treatment and, on the other hand, the seriousness of the offence and the corresponding need for punishment. When the legal requirements relating to the qualification of drug abuser are precise, such as the establishment of a state of dependence by a medically qualified person, then the scope of offences covered tends logically to be broad, usually covering non-drug offences of a less serious nature.

33. Some laws refer to offences connected to the addiction or to non-drug offences punishable by a maximum period of imprisonment. That allows the law to apply not only to drug offences, but also to property offences committed to finance the use of drugs, the underlying purpose being to address the motive for the offence.

34. Most laws, however, limit the availability of alternative measures to drug abusers who have committed drug offences of minor gravity, mainly illicit drug use and possession or purchase for personal consumption. It should be noted that the legislative situation in different States varies greatly as to the establishment of drug use and possession or purchase for personal use as criminal offences, the assessment of their seriousness and the definition of corresponding sanctions.

35. Illicit drug consumption is established, in many countries, as a criminal offence. Some laws introduce distinctions and criminalize only certain types of consumption, or provide for aggravated penalties in such cases. Examples include drug use in a group or in public, use by certain categories of persons such as health professionals, use of particularly dangerous drugs or recidivist use. Those States which do not establish illicit consumption per se as a criminal offence usually achieve a similar result through the offences of possession, purchase or, in some cases, transport for personal consumption.

36. Most laws indeed distinguish between illicit drug-related activities according to their purpose, such as trafficking or personal consumption, the proof of which is approached by various methods. The quantitative approach consists in setting a legal definition of trafficable quantities for each drug, where possession or purchase involving quantities of drugs below the defined limit are considered to be for personal use. That approach, while allowing for clear distinctions, may lack flexibility in taking into account local or individual situations. Other laws entrust to the judge the discretion to determine on a case-by-case basis whether illicit possession, for instance, was for personal consumption or for *trafficking. Some laws provide* for the intervention of medical experts or even informants familiar with

the habits of drug abusers, to assess whether the quantity possessed or purchased can in a given case be considered for personal consumption, taking into account the habits and state of dependence of the individual concerned.

37. Drug offences aimed at personal consumption are usually assessed under drug legislation as being of a less serious nature than trafficking offences, which are aimed at financial profit and cause damage to a larger public. The need of the offender for treatment, combined with the idea that a mild sanction is adequate, results under a number of laws in the provision of treatment measures as alternatives to conviction or punishment. Other laws, under which offences even though they are aimed at personal consumption still give rise to severe penalties (which may reach a maximum of 15 years), and treatment measures are adopted as a variation or addition to a prison penalty. Thus, custody is carried out in a treatment institution, or detoxification and treatment are provided as a first stage, followed by the imposition of the prison sentence from which the time of treatment has been deducted. That procedure is also followed in most countries in cases of drug-trafficking offences by drug abusers.

38. Before alternative measures provided by drug laws are considered, it must be noted that under the law in some States, drug offences aimed at personal consumption are not criminal offences (for instance, in Italy, as a result of a 1993 referendum, and in Spain, under its Organic Law 1/1992), while others find that the legislation enacted has been declared unconstitutional (for instance, in Colombia, as a result of the judgement of its Constitutional Court of May 1994). That does not always exclude prohibition and sanctions, as in the case of Italy and Spain, where personal consumption and possession for personal use are still defined as administrative offences, liable to penalties such as suspension of licences and fines. Such administrative penalties may in turn be replaced by alternative treatment measures. In all those cases, however, offences involving illicit use or possession for personal consumption are diverted from the outset from the criminal justice system and, in the absence of a criminal offence established by law, there can be no alternatives to conviction or punishment strictly speaking.

B. Relationship between treatment and law enforcement measures under drug laws

39. The international drug control conventions authorize States parties to substitute measures of treatment for conviction or punishment, but do not refer to the adoption of alternative measures at the pre-adjudication stage by police or prosecution authorities. Article 3, paragraph 6, of the 1988 Convention refers to discretionary legal powers relating to the prosecution of drug offenders, which should be exercised to "maximize the effectiveness of law enforcement measures" and "deter the commission of such offences". Under the national drug control laws considered in preparing the present report, States do not always limit to the stages of conviction and punishment the adoption of alternative measures.

1. Alternatives at the stage of prosecution

40. Common-law countries entrust police officers with a certain amount of discretion in the exercise of their powers to arrest and charge an offender. Similar discretion based on policy directives or circulars also exists in many non-common law countries. Although the practice is not reflected in drug control legislation, a number of countries, such as the Netherlands, enable police officers to drop certain categories of drug offences considered as minor, in order to reduce the number of cases burdening investigation and prosecution resources. In the United Kingdom of Great Britain and Northern Ireland, police discretion may take the form of cautioning, which may be formal or informal.

41. A number of drug control laws explicitly provide prosecution authorities with the discretion to suspend pursuits, under the condition that the abuser agrees to or complies with medical treatment or supervision measures. In France, for instance, the prosecution of first offenders arrested for drug use

may be discontinued and a therapeutic injunction pronounced by the prosecutor with the agreement of the offender. The public health authority is then requested to conduct a medical examination and a personality assessment, and accordingly order the offender either to undergo detoxification in a specified treatment centre or to place himself or herself under the supervision of a medical practitioner of his or her choice. The health authority is kept informed of the progress made in the treatment, or of its interruption, and transmits such information to the prosecutor. Similar systems also exist under various modalities in other countries, such as Germany and Portugal. A discretionary power to waive prosecution for reasons of expediency in the case of defendants with no prior conviction is entrusted to prosecutors in many countries, and, although not specifically reflected in drug control laws, may be exercised in relation to drug offences, subject to compliance by the offender with treatment measures, or to an admonition or warning by the court to the offender not to repeat the offence. Discretionary prosecution, however, is not a universal principle, and in a number of countries prosecution of drug offences is mandatory.

42. In a neighbouring field, a number of laws encourage drug abusers to spontaneously undertake treatment by a guarantee of confidentiality, and in certain cases an immunity from prosecution for previous minor drug offences that would come to light during the treatment or after its completion.

2. Treatment measures at the stage of conviction and punishment

43. Many drug control laws authorize the court to prescribe treatment measures to drug offenders, under the various legal conditions described above. A number of laws contain similar provisions to the effect that the court may order the "placement", "confinement", "internment" or "detention" of the offender in a treatment institution for detoxification and rehabilitation. The therapeutic methods applied, the relative emphasis on physical detoxification, psychological therapy or support towards rehabilitation are not described under drug laws, and probably exhibit great variety. A common point in such legal provisions is that treatment is compulsory and the offender is kept in custody. The period of treatment is usually defined by the law; in some cases, however, it is made conditional on the achievement of the expected result - detoxification, rehabilitation, capacity of social reintegration - and left to the decision of the judge, who is kept informed through progress reports from the treatment centre. It should be noted that, independently from prosecution for an offence, a number of States provide for administrative measures of internment and compulsory treatment for drug abusers in a state of acute dependence.

44. A number of laws make available various forms of "care contracts" that may be concluded between the judge or the court and the offender. They may take the form of a probation order including therapeutic supervision in place of a prison sentence or, when a prison sentence has been imposed, its conditional suspension with an obligation of treatment. Such procedures follow various modalities as to the degree of medical supervision involved (ambulant in-patient care) or the effects of a breach of the contract conditions (enforcement of the initial prison sentence, distinct penalty, change in the conditions of probation or judicial warning). Their common feature is to foster the agreement and active participation of the drug abuser.

3. Treatment measures at the stage of enforcement of a prison sentence

45. A number of laws provide for bridges between prison and treatment centres, by allowing drug-dependent inmates to serve part of their sentence in a treatment institution or a therapeutic community. Such provisions are useful in the case of offenders sentenced for non-drug-related offences whose drug dependence has not come to light during the judicial proceedings.

46. While the conventions refer to *measures for treatment, education, after-care, rehabilitation* or social reintegration, suggesting a wide range of objectives and variety of methods, the provisions of the drug

control laws most often consist in authorizing a given judicial authority to order treatment or detoxification, without much detail as to modalities and the practical functioning of cooperation between law enforcement and social care actors. Legislative provisions shed no light on the extent to which the potential alternatives defined by law are indeed being used in practice. The extent of use will largely depend on the policy defined, the attitude of law enforcement authorities, court practice and the existence of adequate infrastructure.

III. ALTERNATIVES TO CONVICTION AND IMPRISONMENT AS AVAILABLE UNDER THE LAW IN PRACTICE

47. There is often a difference between provisions for non-custodial sentences under domestic drug legislation and what occurs in practice. That happens for two reasons: provisions may exist in law without being put into practice because the conditions for doing so have not been fully met, as in the case of treatment provisions which can only be applied when treatment programmes for offenders are available; or provisions for alternative sentences may exist in the wider criminal code, without being specified in particular drug legislation. The latter situation is particularly evident in relation to juveniles and young offenders. Although different jurisdictions might make distinctions between categories of offenders at different ages, such as 14, 16, 18 and 21, virtually all make some provision for dealing with young people according to criteria different from those applied to adults.

48. The alternatives cited above are those available to the Secretariat at the time of writing, and are not intended to be exhaustive or comprehensive. They are merely examples of what has been done by some countries in their search for alternatives to conviction and imprisonment for drug offenders.

A. Pretrial stage

49. In order to deal with an offender without going to a court of law there has to be an admission of guilt, otherwise the court has to find the offender guilty in order to dispose of the case. When an offender admits to a crime but is kept away from the criminal justice process, the procedure involved is generally referred to as diversion. The term can also be used after a court appearance, if the offender does not remain within the criminal justice system and the control of the person is assumed by another authority. The term is occasionally used to describe non-custodial sentences, in the sense that the person concerned has been kept out of an institution, but that is not the common use.

50. If the offence is not one of possession, then some determination of dependency status needs to be made in order for the offender to be treated as a drug abuser by the judicial system. The need to identify drug abusers for disposition of the case by the police or the courts is evident, if only because of the provision of useful information to assist the courts in their efforts to reach an appropriate sentence. Attempts to identify individual users are often thwarted by the reluctance of the offender to disclose past or present misuse of illegal drugs to anyone associated with the criminal justice system. The identification of drug-abusing offenders is therefore far from straightforward.

51. There are a number of reasons why an offender would want to keep his or her drug abuse secret. In most societies drug abuse has a very negative connotation, and the stigma associated with it is sufficiently severe for many individuals to deny abuse. In some countries, despite the fact that there is a drug problem, treatment facilities are underused because of the stigmatization attached to the status of being a drug abuser.

52. Other reasons for non-disclosure include: the fear that self-disclosure might lead to harsher sentences for relatively minor offences such as shoplifting, or in cases where the offender might normally expect a fine, but could be placed on probation if found to be a drug abuser; the prospect that

remand in custody might be sought in order to provide a full report on the extent of drug abuse, when normally no such remand would be requested; and the lack of guarantees about the confidential nature of the report, especially if the offender were imprisoned. The result might be increased supervision of visits, cell searches or informal pressure to undergo testing for the human immunodeficiency virus. The presence of dependant children may also be a factor working against disclosure for some drug-abusing offenders who fear that disclosure of drug abuse will automatically lead to their children being taken away from them.

53. Taken together, the above-mentioned reasons constitute a formidable series of disincentives to disclosure. Some confidential agency such as the probation service may be the only means of promoting the early disclosure of drug abuse, but that will be a difficult task requiring training, specific counselling skills and, above all, a great deal of assistance from other agencies, including the courts.

1. Discontinuation of criminal proceedings

54. If a person is arrested there is often no automatic requirement to bring that person before a court. The simplest response is to discharge the offender. "Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims."[10]

55. Discontinuance may be effected by the withdrawal of proceedings or by offering no evidence. It may thus enable treatment programmes to continue without the interruption that criminal proceedings might entail.

56. Defendants, often those with no prior convictions, may be eligible for diversion from prosecution, subject to the completion of specific conditions such as drug treatment. Successful completion of treatment will then lead to charges being dropped, as in cases where the offender is given a caution with a requirement of treatment.

57. As the use of discretionary powers tends to vary depending on local perceptions and pressures, there is no uniform response to drug law violations. That may produce the appearance, if not the reality, of unfairness to individual offenders. Whatever the jurisdiction, the exercise of the discretion not to prosecute, sometimes combined with diversion, results in the avoidance of criminal proceedings and conviction.

58. Discontinuance is not in itself a form of penal treatment, nor can it be said to be a penal warning. However, the prosecuting authorities are often in a position to assess the whole case from both the evidential and the public interest standpoint. That also includes information on the personal and medical background of the defendant, which would not come to the cognizance of the police or any other agency.

2. Conditional discontinuance

59. Conditional discontinuance covers as many options as that of a conditional discharge by the court or a sentence involving supervision, which are detailed below. The difference is that the offender does not come before the court, and that the examining magistrate or the police determines the discontinuance of prosecution and the conditions under which it takes place. In cases involving supervision, it may be done directly by the police or by an agency designated by the police or in accordance with a set of guidelines.

60. Thus, if an offender is a drug abuser in need of treatment, proceedings could be discontinued on condition that the person concerned attend a particular treatment programme, as in Germany and France. Prosecution may also be discontinued in order not to disrupt an ongoing treatment programme undertaken by the offender. Alternatively, offenders may be required to undertake unpaid work in their leisure time, being supervised, for example, by a non-governmental organization.

61. In several experimental schemes, the police, usually working in partnership with other agencies in the community, are given more powers of disposition in relation to an offender. Most of those schemes involve the use of a caution, and are further examined below.

62. The South Australian Drug Assessment and Aid Panel is a diversionary programme that assesses clients referred to it and alleged to have committed "simple possession" offences. The panel individually assesses each client, who has to agree to cooperate with it and to comply with all its reasonable directions for a period of six months. The Panel uses a range of service agencies, as well as providing direct assistance.[11]

63. In the Netherlands there is flexibility throughout the criminal justice system, but it does not appear always to be applied in the case of drug offenders.

64. Any official can suggest an alternative settlement at any stage in the criminal procedure, but it is the responsibility of the police, the public prosecutor, the investigating magistrate or the judge to determine whether or not the arrangements can be approved. As in many countries, whether cases are diverted largely depends on the knowledge of existing alternative programmes, the creativity displayed in drawing up alternative settlements and the willingness of the parties involved to participate in the schemes.

65. Since 1923 Germany has been able to divert juveniles away from the criminal justice system both before coming to court and in court, so that proceedings can be halted prior to conviction. There is considerable regional variation, however, and the actual use of the provision has not been extensive for drug cases.

3. Admonition or cautioning

66. Admonitions, or cautions, as they are called in many common-law countries, are given in order to show public disapproval of a particular crime or to warn an offender.

67. A formal caution of an arrested offender is essentially an administrative act based on the discretion exercised by the police in deciding whether or not to prosecute. As such, the caution need not be defined in legislation. The caution differs from the simple exercise of discretion in that it is a matter of record, it may influence a decision to institute proceedings for a further offence, and it may be cited as part of the criminal record of an offender. The conditions necessary for a caution to be administered usually include the production of evidence of guilt of the offender, the admission of the offence, the understanding by the offender, or by the parent or guardian of the offender if the latter is a juvenile, of the significance of the caution and the giving of formal consent. Factors taken into account in deciding to caution include the nature of the offence, the likely penalty, the age and state of health of the offender, and his or her previous criminal history and attitude to the offence.

68. Cautioning has three main objectives: to deal quickly and simply with less serious offenders; to direct them from the criminal courts, and thereby reduce the burden on the criminal justice system; and to reduce the chances of reoffending. Often the caution is removed from all records after a stipulated period of time.

69. It has been suggested that some offenders might admit to an offence and agree to a caution (or be pressured to do so by parents) in order to have the matter dealt with speedily, irrespective of guilt. An admission of guilt without the benefit of legal advice may be in ignorance of a valid defence. The fact that the criteria used to make cautioning decisions are rarely made known to anyone outside the police force and that there is a considerable variation in cautioning rates has been criticized as a potential threat to natural justice. For example, one police force may caution for cannabis only, while another may caution for possessing small amounts of heroin. Wide variations clearly exist both within countries and from one country to another. It has been argued that cautioning should be governed by statute, involving national guidelines embodied in regulations, as was being considered in many countries.

70. The issues raised go beyond drug offences, but with up to three quarters of drug offenders being dealt with by caution in one country, there seems to be a case for establishing cautioning criteria.

71. Cautioning seems to be a particularly appropriate way of dealing with certain types of drug offender, particularly the young or the first-time offender. Its effectiveness in reducing reoffending, however, still remains in question. Research results suggest that for most first offenders the likelihood of reoffending is no greater than after conviction by the courts. Other studies suggest that three quarters of those cautioned for a drug offence (98 per cent for unlawful possession of cannabis) between 1987 and 1989 had not been dealt with for a further drug offence by the end of 1992, although some may have been convicted of other offences. First offenders were significantly less likely to be dealt with again for a drug offence during the follow-up period than those with previous convictions or cautions for any type of offence.

72. Cautioning, formal and informal, offers a pragmatic solution to the problem of the minor drug offender. It is used extensively in the United Kingdom and in some states of Australia. Its advantages are that it is cheap to administer, it is no less effective than bringing offenders before the court, and it also avoids stigmatizing offenders with a court conviction. Its disadvantage is that it can be regarded as too lenient, that there are often wide variations in the way it is applied, and, arguably, that by not letting the law take its course, particularly in the case of repeated offending, the law as a whole may be brought into disrepute.

73. Nevertheless, the practice of cautioning appears to be widespread and to attract wide support, and its extension has been suggested, for example through combining the caution with a requirement that the offender should cooperate with social work agencies or the probation service, or agree to consult a doctor or attend a treatment clinic. Thus, cautioning and conditional discontinuance become combined.

74. Such is the case in New Zealand. In that country the concept of family conferencing has been developed and extended to cover drug offenders. "The conferences are intended to allow the offender the opportunity to face up to the impact of his or her crime, to allow victims to express their anguish and anger, and to allow both parties to find ways of re-entering the community."[12] Trials are also starting in some states of Australia using that approach. Initial results seem to indicate not only that the participants, both victim and offender, prefer such a solution, but that the recidivism rate among those processed by that means was significantly lower than for those going to court.

75. Another suggestion is to allow the courts to provide the formal caution in the belief that the solemnity of the court setting may have a greater deterrent effect than a caution administered by the police.

4. Civil sanctions

76. The criminal sanctions described below do not differ greatly from civil sanctions that may be imposed in lieu of prosecution. An offender may be required to pay a fixed financial penalty as an alternative to prosecution. In many cases prosecution is automatic if the offender commits a similar offence within a fixed period of time, such as five years.

77. In the Australian Capital Territory, cannabis infringement notices can be served on anyone found in possession of a certain quantity of cannabis (with less than 25 grams or cultivating no more than 5 cannabis plants). The offence notice carries a fine of 100 Australian dollars. If it is paid in accordance with the notice, the matter is completely discharged, and no conviction is recorded against the offender.

78. Other types of civil sanction markedly different from that described above are also available. In some countries, judges are empowered to deny specific state benefits to persons convicted of drug possession or trafficking. In societies where car ownership is very widespread, the suspension of a driving licence can be most effective. Benefits such as student loans and radio and television licences can be denied or revoked. A judge may reinstate the benefits if an offender demonstrates that he or she has been rehabilitated, and has remained drug-free for a predetermined period of time, such as six months.

B. Conviction

79. In view of the considerable volume of research findings which indicate that the younger people are when they first have contact with the juvenile justice system, the more likely they are to have further contacts, and that the younger they are when they receive some form of custodial sentence, whether incarceration, correction or training, the more likely they are to reoffend, it is important, particularly for young offenders, to find alternatives to institutional responses when found guilty of an offence. That has been especially highlighted in States where the dramatic rise in the number of drug offences has imposed an increased burden on the criminal justice system.

80. Courts usually have at their disposal the option to release the offender unconditionally, even after a finding of guilt. Where that occurs it is often because the court feels that the experience of going to court, or of remand in custody prior to trial, is sufficient punishment in itself.

81. It is more often the case, however, that courts release an offender under certain conditions, which generally involve some form of supervision in the community and possibly a programme of work or treatment.

82. In deciding what sentence to pass on an offender, many countries have courts with the power to send the offender for some form of assessment, particularly where a treatment order is being considered. The assessment may take many forms, from intensive residential programmes to short interviews. The report on the assessment provides a basis for the sentencing decision.

1. Non-supervision: fines and suspended sentences

(a) Fines

83. Fines are used in some countries as penalties, particularly for possession of small amounts of illegal drugs, which are usually considered for personal use. However, many people who are drug abusers are also the least affluent members of the community, and are mostly not in a position to pay. There is the additional problem that fines may be seen as a way out for the rich, whereas the poor risk

prison if unable to pay. For those reasons, even though in some countries legislation has been passed to permit drug offenders to be dealt with in that way, the necessary enabling procedures have not been adopted.

(b) Suspended sentence

84. "Discharge (absolute and conditional) is mainly being used as a warning - a reasonable way of coping with those offenders whose crimes are not too serious and who do not present risks of reconviction. The suspended sentence ... has a wider application because offenders are sentenced to a certain prison term, varying from a few months ... (to no limits), thus permitting formal disapproval, sanctioned by the pronouncement of a sentence commensurate with the offence" (A/CONF.87/7, paragraph 54). Essentially, as noted in a report of the Secretary-General on alternatives to imprisonment and measures for the social resettlement of prisoners, submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, "... it is a declaration of guilt without the imposition of a sanction (A/CONF.121/13, paragraph 40)".

85. For drug offenders the imposition of a suspended sentence normally entails compliance with certain conditions such as supervision and no further offence being committed. The amount of time varies considerably from one country to another, ranging from one to five years. The length of the term of imprisonment that can be suspended also varies considerably around the world.

2. Supervision: parole, treatment, community service and corrective labour

(a) Parole or probation

86. Many countries provide for an offender to be at liberty or semi-liberty, but with conditions attached and under some form of supervision. The degree and frequency of supervision varies widely, as does the authority responsible for the supervision and the response to and penalties for non-compliance with the conditions imposed.

87. Some form of probation or supervisory programme is provided by many countries for drug offenders, often with conditions attached, such as that of not reoffending. Probation, with varying degrees of supervision, will involve frequent and regular contact between offender and officer. Such contact may be combined with requirements such as drug treatment, drug testing, community service and electronic monitoring. Failure to comply may lead to more intensive supervision or imprisonment.

88. A probation order does not empower the probation officer to require an individual to receive treatment, nor does a community service order, for that can only be done by the courts, but it does provide a framework within which individuals can be encouraged to take advantage of counselling or treatment opportunities made available either within the probation service or from specialist agencies.

89. A variant of intensive supervision is the use of day reporting centres. Offenders are required to report regularly and frequently and to participate in various programmes. Centres will vary widely in their programmes and in the number and type of offenders served. Services provided either on-site or through referral may include job placement, training in seeking employment and life skills, counselling, education, recreation and transitional housing.

(b) Community service

90. As noted in a report of the Secretary-General on alternatives to imprisonment and the reduction of the prison population, submitted to the Eighth Congress: "Community service involves the obligation to perform a certain number of hours of unpaid work for the good of the community during leisure time, within a given time limit, and is imposed as a sentencing option or condition ... The advantage of community service lies in the fact that it gives offenders an opportunity to make amends by working for the well-being of others and makes it possible for the community to contribute actively in their integration into society. It also provides an opportunity to educate offenders in social relations" (A/CONF.144/12, paragraphs 49 and 51).

91. The minimum number of hours involved varies considerably from one country to another, as does the penalty for non-compliance, which may vary from a fine to the imposition of a suspended sentence.

92. A large number of studies seem to indicate that community service, of itself, without some form of treatment regime, is not the most effective way of changing drug-abusing behaviour.

(c) Corrective or compulsory labour

93. Corrective labour usually involves the obligatory performance of work at the place of work of the offender, often with additional penalties, including a salary reduction. In the case of obligatory labour, the competent authorities determine the place of work of the offender, who has to live in special hostels under restricted liberty.

94. The belief in the rehabilitative and re-educative power of work is the philosophy underpinning that approach. It is applied in only a few countries, and seems to be declining in use. There does not appear to be conclusive evidence that such an approach can achieve the desired results.

(d) Drug treatment

95. The use of drug treatment as a condition of avoiding a custodial sentence is often controversial. Issues raised by the courts imposing treatment conditions in a sentence include whether compulsory treatment may achieve lasting results, or whether some amount of willingness and cooperation from the abuser is essential. The relationships between medical practitioners in charge of treatment and judicial authorities, the intertwining of care and law enforcement roles, as well as questions of civil rights posed by internment for indefinite periods, are issues that need to be considered. Making treatment a condition for the avoidance of imprisonment seems designed to take into account the medical condition of the offender, and at the same time to keep him or her away from an environment where treatment would be minimal and the opportunity for further drug abuse great. It is therefore not necessarily more lenient than imprisonment, nor much different in concept from punishment.

96. Drug treatment programmes typically include individual counselling, group counselling or referral to a support group, which may involve out-patient care, day support, in-patient care or therapeutic community support.

97. Other treatment services may include drug education, behaviour modification, acupuncture, family therapy, relapse prevention training and the development of coping and interpersonal skills. The ability to remain drug-free may be fostered by rehabilitation and reintegration programmes, such as the provision of further education, job placement and skill training.

98. Drug treatment may be mandatory for some drug abusers, but the extent of legal pressure and sanctions for non-compliance will vary. The court may therefore order some offenders to undergo treatment, while recommending it to others. A number of treatment facilities may involve pharmacological treatment such as methadone maintenance, but the majority of treatment referrals are to drug-free programmes.

99. One major problem is the reluctance of the treatment agencies to take offenders except on a wholly voluntary basis, arguing that compulsion is not appropriate to treatment. Such a view assumes that those entering treatment do so without any outside pressures, and ignores research evidence which shows that treatment outcomes are not related to the manner in which offenders enter the programme. The position in the United States of America offers more optimism, with a paradigm shift by most treatment agencies towards an acceptance of the value of court orders - or if not, then at least towards a view that court orders are not detrimental to treatment.

100. A review of the Civil Addict Program (CAP) in the State of California concluded as follows: "The general conclusion from studies of the California CAP is that civil commitment and other drug treatment initiatives, particularly MM (methadone maintenance), are effective ways to reduce narcotics addiction and to minimize the adverse social effects associated with it. How the individual is exposed to treatment seems to be irrelevant. What is important is that the narcotics addict must be brought into an environment where intervention can occur over time. Civil commitment and other legally coercive measures are useful and proven strategies to get people into a treatment program when they will not enter voluntarily."[13] However, as noted in the same publication, " Civil commitment cannot overcome deficits in treatment services. Civil commitment, or any other kind of external coercion, can bring drug users into treatment but cannot assure that patients will participate in treatment."[14] In addition, it is unclear how far the United States experience can be translated to other countries and cultures.

(e) Building bridges between the criminal justice system and the treatment system

101. The programmes of Treatment Alternatives to Street Crime (TASC) developed in the United States provide screening, assessment, treatment planning, monitoring, urinalysis and court liaison functions, at both the pretrial and post-trial stage. Drug-dependent offenders, whether accused or convicted of non-violent crime, are taken out of the criminal justice system as early as possible and referred to a community-based treatment programme. TASC then monitors the progress of the offender and reports back to the agency that originally handed over jurisdiction. Failure to comply with the established conditions or guidelines results in the offender being returned to the criminal justice system for continued processing or for sanctions.

102. Evaluations suggest that the TASC programmes were able "to reduce drug abuse and criminal activity, linked the criminal justice and treatment systems, and identified previously untreated drug-dependent offenders ... The TASC model offered a beneficial and cost-effective alternative to the criminal justice system for drug-abusing offenders."[15] From an organizational perspective, the evaluations concluded that there were many elements that made for a successful programme, but "staff quality was more important to program success than were organizational and other factors."[15]

(f) Supervision of treatment by the court

103. The specially established drug courts operating in some states of the United States offer a new approach to the set of seemingly intractable problems created by large numbers of drug offenders entering the criminal justice system. The problem has been exacerbated by the mandatory prison sentences that courts have been required to pass on offenders with two felony convictions - often drug convictions. That led to massive overcrowding in prisons.

104. The drug courts operate by sending offenders charged with drug possession or purchasing to education, treatment or vocational assistance programmes which are themselves monitored by the courts. The aim is to do more than simply move cases quickly through the system. The drug courts were designed to offer treatment and yet retain the influence and judicial power to deal with drug offenders.

105. Drug courts began as treatment diversion or deferred prosecution courts that sent defendants to treatment programmes shortly after arraignment and dismissed their cases following successful treatment. The result was a treatment programme overseen by the court with more direct involvement of the judge.

106. The principle behind drug courts is that the offender remains within the court setting. Drug courts do not hand cases over to treatment agencies, nor do they divert cases out of the court system in accordance with a purely diversionary model, nor do they sentence offenders to probation or prison. Drug courts retain control of the offenders and of the programme. If the offender fails to abide by certain conditions, the court may place him or her to custody for a period of time, often only two or three weeks, but the offender then returns to the programme, which normally lasts for one year. Only after many failures will the court return an offender to the traditional judicial system. Failures are defined as not attending the programme, not reporting to the court, or testing positive for illicit drugs.

107. The diversion and treatment programme has three phases, namely detoxification, stabilization and after-care, and relies to a great extent on the integration of programmes and cooperation between both statutory and voluntary agencies.

108. The results are very encouraging. They show that abusers referred to drug courts tend not only to commit fewer offences than their counterparts who are not referred to drug courts, but also to do so with less regularity.

109. The procedures resemble the practice in some countries of dealing with truants through designated truancy authorities, who test school attendance by repeated adjournments of proceedings. The practice has been quite successful in securing regular attendance, although doubts have been expressed as to the legitimacy of continued and lengthy adjournment of proceedings for such a purpose. Legislation in the State of Florida as of 1 October 1993 specifically addresses the legal issues attached to "coercive" adjournment and remand. The pretrial intervention programme now enacted effectively legalizes the system adopted, and provides for admission into a pretrial substance abuse education and treatment intervention programme approved by the chief circuit judge for a period of not less than one year. If the court finds that the defendant has not successfully completed the programme, it may order continued education and treatment, or that the charges revert to normal channels for prosecution. If the defendant successfully completes the programme, the court is bound to dismiss the charge.

110. Courts adopting such a model depend heavily on the judge. The defendant is addressed directly, and is required to answer directly to the judge. It is a novel role for the judiciary, the judge being, in effect, the executant of his or her own orders, and in the event of a failure on the part of the defendant, the judge decides on the resumption of prosecution. Custodial remand may be ordered for breach of requirements or failing drug tests, with treatment resuming after the shock of incarceration.

(g) Checking compliance: drug testing

111. Offenders under supervision in the community may be required to submit to drug testing as a condition of probation or as part of the required treatment. In the United States, a number of states authorize the testing of adult offenders and the mandatory testing of juvenile probationers. Probation and parole systems in 36 states and the District of Columbia reported administering 1.5 million urine tests in 1990.

112. A pilot study of mandatory drug testing in 8 United States judicial districts, involving felony offenders on probation or granted supervised release on or after 1 January 1989, found that 5 per cent of the 4,979 urine tests administered to 718 individuals were positive for drug use. The report concluded that there is no evidence that increased post-conviction testing would increase the identification of substance abuse by those under supervision of the federal probation system, since current procedures identify most drug users prior to this stage.

113. Except for preliminary screening or when performed by qualified and trained personnel, many reservations have been expressed about the use of immunoassay tests, particularly urine tests. "Immunoassays are considered good screening tests but not sufficient by themselves for a conclusion to be drawn ... When used in a non-laboratory environment, they are prone to procedural inaccuracies, poor quality control, abuse and misrepresentations. Therefore they are not recommended for testing in the workplace. The risk of labelling a person with a false positive is high without confirmatory analysis."[16]

(h) Semi-liberty: tagging

114. In addition to all the above-mentioned alternatives to imprisonment, there are house arrests or curfews, which can be used on their own or with some form of personal supervision, treatment or counselling. These are not new sanctions, but recent technological developments in electronic monitoring of offenders has made it easier to enforce compliance with orders to remain at home at certain times or not to frequent certain locations. The devices used enable the appropriate judicial officer, usually a probation officer, to determine whether an offender is at home when required. Contact at programmed times, requiring a certain response from the offender, will also indicate whether the condition is being met.

115. The devices are by no means foolproof; some can be removed without detection. Further, none of the devices can prevent an offender from using or selling drugs or committing other crimes while at home, nor do they prevent the commission of offences away from home. Electronic tagging of offenders has met with considerable opposition in some quarters, especially in the United Kingdom. A survey carried out by the American Probation and Parole Association and the National Association of Probation Executives in the United States in 1991 indicated, however, that 25 per cent of respondents in urban probation departments used electronic monitoring for some drug-involved probationers.

116. Electronic monitoring is sometimes used as an alternative to detention before adjudication. In a study of juvenile courts carried out in the United States in 1988, nine programmes offering monitoring were examined. Failure rates ranged from 5 per cent to 33 per cent. The average length of the monitoring period ranged from two weeks to three months.

IV. GUIDANCE REQUESTED FROM THE COMMISSION ON NARCOTIC DRUGS

117. The Commission, in its consideration of item 4 (c), will no doubt wish to take into account the options for future work in the area covered by the present report. Among the options, all of which would have programme budget implications, are the following:

(a) The Commission might wish to invite UNDCP to undertake a survey of the formal and informal practices employed by member States to divert those charged with drug offences and those who are drug abusers away from the criminal justice system;

(b) The Commission might wish to invite UNDCP to undertake a review of research conducted with a view to undertaking a cost-benefit analysis of alternatives to imprisonment;

(c) The Commission might wish to invite UNDCP to undertake a comparative study to evaluate the relative effectiveness of alternatives to imprisonment, and to prepare a report including suggestions for the appropriate methodology to be used in carrying out the evaluations. The Commission might also wish to request UNDCP to commission small research projects in several parts of the world with a view to such a study.

Notes

[1]United Nations, Treaty Series, vol. 528, No. 7515.

[2]Ibid., vol. 976, No. 14152.

[3]Ibid., vol. 1019, No. 14956.

[4]E/CONF.82/15 and Corr.2.

[5]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.

[6]See Commentary on the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (ST/CSDHA/22), p. 2.

[7]Ibid., p. 3.

[8]Ibid., p. 5.

[9]Ibid., p. 10.

[10]Ibid., p. 15.

[11]Alcohol and other Drugs Council of Australia, "Alternatives to the prosecution of alcohol and drug offenders", a report prepared for the National Drug Crime Prevention Fund (September 1994), p. 45.

[12]Ibid., p. 38.

[13]See D. M. Anglin, "The efficacy of civil commitment in treating narcotic addiction", in Compulsory Treatment of Drug Abuse: Research and Clinical Practice, National Institute on Drug Abuse Research Monograph 86, C. G. Leukefeld and F. M. Tims, eds. (Washington, D.C., Department of Health and Human Services, 1988), pp. 8-34.

[14]See J. F. Maddux, "Clinical experience with civil commitment", in Compulsory Treatment of Drug Abuse ..., pp. 35-56.

[15] See L. F. Cook and others, "Treatment alternatives to street crime", in Compulsory Treatment of Drug Abuse ..., pp. 99-105.

[16]See B. M. Kapur, "Drug-testing methods and clinical interpretations of test results", Bulletin on Narcotics (United Nations publication, vol. 45, No. 2 (1993)), pp. 115-154.